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No. .....

Supreme Court, U.S.
FILED
MAY 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

J. YOUNG & COMPANY, INC.,

Petitioner,

versus

M/V BOB LIVINGSTON, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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May, 1986

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QUESTION PRESENTED FOR REVIEW

Whether, in the absence of physical damage, a party sustaining economic losses may recover those losses from a tortfeasor.

Petitioner respectfully directs the attention of the Court to the matter entitled "James White, d/b/a Blue Wave Oyster Co., et al. vs. M/V TESTBANK", bearing No. 84-1808 on the docket of the United States Court of Appeals for the Fifth Circuit and in which matter a Petition for Writ of Certiorari is currently pending before the United States Supreme Court, October Term, 1985. This matter involves the identical question of law sought to be addressed by petitioner in the instant Petition for Writ of Certiorari.

LIST OF PARTIES

The parties to the proceedings in the Court of Appeals for the Fifth Circuit were:

J. Young & Company, Inc. (lessee and operator of certain portions of the Nashville Avenue Wharf)

Cove Shipping, Inc. (operator of the M/V COVE LEADER)

Cove Ventures, Inc. (owner of the M/V COVE LEADER)

Delta Marine Towing, Inc. (owner of the M/V BOB LIVINGSTON and M/V BILL HALL)

Mission Insurance Company (liability underwriter for the M/V BOB LIVINGSTON and the M/V BILL HALL)

The West of England Ship Owners Mutual Insurance Association of (London) Ltd. (insurer of the COVE LEADER, its owner and operator)

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STATUTE CITED

28 U.S.C. § 1254(1) 2

No. .....

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In The

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October Term, 1985

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J. YOUNG & COMPANY, INC.,

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M/V BOB LIVINGSTON, ET AL.,

Respondents.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

—o—

OPINIONS BELOW

The opinions below are contained in the appendices to the Petition. Appendix "A" is the decision of the Court of Appeals for the Fifth Circuit, filed February 27, 1986. Appendix "B" is the Findings of Fact and Conclusions of Law of the District Court, dated April 29, 1985. Appendix "C" is the judgment entered by the United States District Court for the Eastern District of Louisiana, dated April 29, 1985.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on February 27, 1986.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

———o———

STATEMENT OF THE CASE

In the early morning of December 31, 1982, the M/V BOB LIVINGSTON anad the M/V BILL HALL were heading downbound in the Mississippi River with nine barges in tow. The M/V COVE LEADER, traveling behind this procession of barges and tugs, was in the course of overtaking the tow when one of its barges collided with the SEA-BEE Lash Fleet of barges which was moored at the Nashville Avenue Wharf on the Mississippi River within the City of New Orleans. The impact of this collision caused the barges to break tow and float downstream. Eventually, one of the barges sank about thirty or forty feet away from a section of the Nashville Avenue Wharf leased and operated by petitioner.

From the date of the sinking on December 31, 1982, until January 27, 1983, as a result of the sunken barge, petitioner's shipping customers had no access to berths where loading and unloading of cargo normally took place. Petitioner's customers were forced to dock at distant berths and petitioner was obliged to engage additional equipment and to hire extra labor in order to service them. Accordingly, petitioner thereby sustained economic losses.

As a result, petitioner filed suit in the United States District Court for the Eastern District of Louisiana against the parties involved in the casualty which resulted in the sinking of the barge. Liability was stipulated subject to the right of petitioner to recover economic losses. The District Court held that *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927) and *State of Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F. 2d 1019 (5th Cir. 1985) (*en banc*) precluded recovery by petitioner and dismissed the Complaint.

Petitioner appealed from the judgment of the District Court in favor of respondents. The Court of Appeals for the Fifth Circuit issued an opinion filed on February 27, 1986, affirming the order of the District Court.

—o—

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

In dismissing petitioner's suit for economic losses because of the absence of an accompanying physical injury to a proprietary interest, the Court of Appeals and the District Court disregarded completely the basic concepts of foreseeability and proximate cause. The result reached has profound and far reaching effects on the important field of tort recoveries.

The decisions relied upon by the Court of Appeals and the District Court, that of the Supreme Court in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927), and that of a divided Court of Appeals in *State of Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th

Cir. 1985) (*en banc*), enunciate a rule which is arbitrary, unsound, and anachronistic.

Petitioner's position is well stated in the dissent of the *TESTBANK* case:

> *ROBINS* was a tort case grounded on a contract. Whatever the justification for the original holding, this Court's requirement of physical injury as a condition to recovery is an unwarranted step backwards in torts jurisprudence The resulting bar for claims of economic loss unaccompanied by any physical damage conflicts with conventional tort principles of foreseeability and proximate cause. *State of Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 at 1035. (Wisdom, J., dissenting)

The continued application of a doctrine precluding liability for negligence which results only in economic loss is unwarranted. Petitioner respectfully urges this Court to grant the petition for a writ of certiorari.

CONCLUSION

For the reasons stated in the Petition, the Writ of Certiorari should be granted.

Respectfully submited,

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May, 1986

OF COUNSEL:

Phelps, Dunbar, Marks, Claverie & Sims

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 85-3310
Summary Calendar

J. YOUNG & CO., INC.,

Plaintiff-Appellant,

versus

THE M/V BOB LIVINGSTON, ET AL,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Texas

(February 27, 1986)

Before RUBIN, REAVLEY and HILL, Circuit Judges.
PER CURIAM:*

Plaintiff J. Young & Co., Inc. (Young) appeals from the dismissal of its suit against defendants, The M/V BOB LIVINGSTON et al.[1] We affirm.

---

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

[1] Defendants-Appellees are Delta Marine, Towing, Inc. (the owner and operator of both the M/V LIVINGSTON and the M/V BILL HALL); Mission Insurance Co. (Delta's Insurer); Cove Ventures, Inc. (the owner of the M/V COVE LEADER); Cove Shipping, Inc. (the operator of the M/V COVE LEADER); and West of England Ship Owners Mutual Association Ltd. (the insurer of the Cove Interests).

I.

On the early morning of December 31, 1982, the M/V BOB LIVINGSTON and the M/V BILL HALL were heading downbound on the Mississippi River with nine barges in tow. The M/V COVE LEADER, traveling behind this procession of tugs and barges was in the course of overtaking them when one of the barges collided with the Sea Bee Lash Fleet moored at the Nashville Avenue Wharf. The impact of the collision caused the barges to break tow and to float downstream. One of the barges sank about thirty or forty feet away from a section of the Nashville Avenue Wharf leased and operated by Young.

From the date of the sinking on December 31 until January 27, 1983, Young's shipping customers had no access to berths where loading and unloading of cargo normally took place. Young's clustomers were forced to dock at distant berths and Young was obliged to use extra equipment and hire extra labor in order to service them.

Finding that Young had no proprietary interest in the Nashville Avenue Wharf, the district court held that *Robins Dry Dock and Repair Co. v. Flint*, 275 U.S. 303 (1927), and *Louisiana ex. rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th Cir. 1985) (en banc), precluded recovery by Young.

II.

Young's claim fails in two respects. First it lacks a proprietary interest in the wharf. Second, there was no physical damage to its leased interest. In *Robins*, the time charterers of a steamship sought to recover for their lost use of the ship when the defendant drydock company

negligently damaged the propeller. The Supreme Court denied the claim, reasoning that

> [the time charterer's] loss arose only through their contract with the owners and . . . a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong.

275 U.S. at 308-09. In *Testbank,* we discerned a dual sigficance in the *Robins* holding. First and most obvious, a claimant seeking recovery must demonstrate injury to a proprietary interest. Second, mere economic loss (such as loss affecting the value of a contract right) is not recoverable. *Testbank* formally united these two principles, holding "there could be no recovery for economic loss absent physical injury to a proprietary interest." 752 F.2d at 1023.

Young, having demonstrated no proprietary interest in this leased portion of the wharf and further having demonstrated no physical damage to his facilities, has no cause of action against defendants.

This opinion is unanimous, but Judge Rubin notes that, while he adheres to the dissenting opinion in *TESTBANK, supra,* the court is bound by that en banc decision.

AFFIRMED.

A true copy.

Test:
Clerk, U.S. Court of Appeals
Fifth Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 83-405
consolidated with
83-5741, 83-6216, and 83-5747

SECTION "J"

RIVER & GULF TRANSPORTATION

versus

M/V BOB LIVINGSTON, ETC.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

On December 31, 1982, the M/V BOB LIVINGSTON and the M/V BOB HALL were pushing a flotilla of nine barges down the Mississippi River when the M/V COVE LEADER attempted a passing maneuver. The M/V BOB LIVINGSTON and the M/V BILL HALL successfully avoided a collision with the M/V COVE LEADER, but their tow collided with the Sea-Bee Lash Fleet moored at the Nashville Wharf. The wharf was owned by the Board of Commissioners of the City of New Orleans.

Ohio Barge Line, Inc., River & Gulf Transportation Company, Warrior & Gulf Navigation Company, and A & G Transportation Company are the barge owners/operators who claim that they suffered damage due to the collisions. J. Young & Company, Inc. claims loss of use of the Nashville Wharf due to the sinking of a barge in front of a portion of the dock it leased from the Board of Com-

missioners, and also claims that the salvage operations interfered with its use of the dock.

Named as defendants are Delta Marine Towing, Inc. (the owner and operator of both the M/V BOB LIVINGSTON and the M/V BILL HALL); Mission Insurance Company (Delta's insurer); Cove Ventures, Inc. (the owner of the M/V COVE LEADER); Cove Shipping, Inc. (the operator of the M/V COVE LEADER); and West of England Ship Owners Mutual Association, Ltd. (Insurer of the "Cove" interests).

Liability and quantum were bifurcated and the defendants stipulated liability for 100% of the plaintiff's provable damages on the following basis:

—Delta Marine Towing, Inc. and Mission Insurance Company are liable for 65% of the total of all damages; and

—Cove Shipping, Inc., Cove Ventures, Inc., and West of England Ship Owners Mutual Association, Ltd. are liable for 35% of all damages.

Because of the foregoing stipulation, this court's inquiry is limited to a determination of the amount of damage sustained by the plaintiffs. Based upon the evidence introduced at trial, and the stipulations of the parties involved, this court makes the following Findings of Fact and Conclusions of law:

Ohio Barge Line, Inc. and River & Gulf Transportation Company have become a single corporate entity.

Ohio Barge Line, Inc. and/or River and Gulf Transportation Company have paid invoices for the following items due to the collisions:

1)	Damage to Barge AGT-108	$ 6,099.82
2)	Damage to Barge AGT-144	2,159.00
3)	Damage to Barge WGN-511	1,600.00
4)	Salvage Costs	137,633.75
5)	Dockage Charges	2,227.00
6)	Towing and Shifting expense	2,922.50
7)	Electronic Survey (to locate barge)	820.00
8)	Barge Damage Survey	10,329.00
9)	Cargo Loss	77,275.94

The defendants have introduced no evidence controverting the fact that these amounts were proper so this court finds that Ohio Barge Line, Inc. is entitled to recover these items.

River & Gulf Transportation Company was the owner of RGT-73 which sank due to the accident, so it is also entitled to recover $75,000 for the total loss of that vessel.

A & G Transportation Company was the owner of the AGT-204 which also sank, so it is entitled to recover $175,000 for the sinking of that vessel.

The only loss sustained by Warrior & Gulf Navigation Company was physical damage to the WGN-511 in the amount of $1,600. Ohio Barge Line, Inc. is the person legally entitled to recover this item of damage as Warrior & Gulf's subrogee.

Ohio Barge Line surveyed several vessels not owned/operated by any of the parties in this lawsuit. The claims of the plaintiffs for an additional $3,661.50 representing these survey expenses are disallowed because none of the plaintiffs were owners/operators of the following vessels:

HBL-1602B, ITEL-207, Sea Bee-Lash Fleet No. 1-11 Dolphins, LY-26, LY-31, LY-81, and LY-175.

J. Young & Company, Inc. does not have a proprietary interest in the Nashville Wharf. That wharf is owned by the Board of Commissioners of the City of New Orleans. J. Young & Company does have a contractual right to use that wharf, but J. Young & Company did not contract with any of the defendants.

The General Maritime law does not allow recovery for economic loss where there is no physical injury to a proprietary interest, so the claims of J. Young and Company, Inc. must be denied.

Prejudgment interest will be allowed from the date of the collision, December 31, 1982. The rate for prejudgment interest will be the same rate as specified in 28 U.S.C. 1961(a): the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week U.S. Treasury Bills settled immediately prior to the date of the judgment.

The rule of *Robins Dry Dock v. Flint,* 275 U.S. 303, 48 S.Ct. 134 (1927) is as follows: a plaintiff cannot recover for economic loss if the loss resulted from physical damage to property in which he had no proprietary interest. *State of La. Ex Rel Guste v. M/V TESTBANK,* 752 F.2d 1019 (5th Cir., 1985).

In *Kaiser Aluminum v. Chemical Corp. v. Marshland Dredging Co.,* 455 F.2d 957 (5th Cir., 1972) a Marshland Dredging Company barge negligently dropped an anchor damaging an underwater pipeline owned and operated by

Sugar Bowl Gas Company. The gas flow to Kaiser Aluminum was immediately shut off causing an entire plant to shut down. Kaiser sued Marshland Dredging Company for shutdown expenses and production losses, but the district court granted summary judgment dismissing the case based upon *Robins Dry Dock* (supra). The Fifth Circuit affirmed.

The negligence of M/V BOB LIVINGSTON, M/V BILL HALL and/or M/V COVE LEADER caused the Barge RGT-73 to sink in front of the Nashville Wharf. This interfered with J. Young's rights under its contract just as the negligent handling of the anchor by Marshland interfered with Kaiser Aluminum's rights under its contract with Sugar Bowl Gas Company. But, negligent interference with contractual rights is not actionable under maritime tort law. The claims of J. Young & Company must be dismissed.

The general rule in admiralty is that those injured by tortious collision are entitled to prejudgment interest as part of just compensation for the wrong done. *Sinclair Refining Company v. S.S. Green Island,* 426 F.2d 260 (5th Cir. 1970). Interest runs from the date of the collision. *American Zinc Co. v. Foster,* 441 F.2d 1100 (5th Cir., 1971).

The court finds no circumstances in this particular case which would justify the disallowance of prejudgment interest, so interest will run from the date of the collision, December 31, 1982.

The parties disagree on the rate of prejudgment interest to be applied. This court recognizes that the rate

of post judgment interest is statutory, but Congress has not indicated what interest rate will apply prior to the date of judgment.

The plaintiffs contend that this court should use the rate of interest provided by Louisiana law. Prior to the amendment to 28 U.S.C. 1961, all federal court judgments were subject to interest at the State rate of interest But, the amendment to that section eliminates the requirement to conform to the State post-judgment rate. Recognizing the benefits of uniformity, this court declines to accept the plaintiff's invitation to set interest at the Louisiana rate. Instead, this court finds that the rate of prejudgment interest should be the same rate as will be applicable after the entry of the judgment.

New Orleans, Louisiana, this the 29th day of April, 1985.

/s/ Patrick E. Carr
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISANA

RIVER & GULF TRANSPORTATION	CIVIL ACTION
VERSUS	NO. 83-405 consolidated with
M/V BOB LIVINGSTON, ETC.	83-5741, 83-6216, and 83-5747
	SECTION "J"

JUDGMENT

In accordance with this court's written Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED that there is judgment in favor of plaintiffs, Ohio Barge Line, Inc., and River & Gulf Transportation Company against defendants Delta Marine Towing Inc. and Mission Insurance Company in the amount of $205,443.56 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that there is judgment in favor of plaintiff, Ohio Barge Lines, Inc. and River & Gulf Transportation Company against defendants, Cove Ventures, Inc., Cove Shipping, Inc. and West of England Ship Owners Mutual Association, Ltd. in the amount of $110,623.45 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is judgment in favor of A & G Transportation Company and against defendants Delta Marine Towing, Inc. and Mission Insurance Company in the amount of $113,750.00 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is judgment in favor of A & G Transportation Company and against defendants Cove Ventures, Inc., Cove Shipping, Inc. and West of England Ship Owners Mutual Association, Ltd. in the amount of $61,250.00 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims of J. Young & Company, Inc. and Warrior & Gulf Navigation Company are dismissed.

New Orleans, Louisiana, this the 29th day of April, 1985.

/s/ PATRICK E. CARR
UNITED STATES DISTRICT JUDGE

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No. 85-2002

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

J. YOUNG & COMPANY, INC.,

Petitioner,

versus

M/V BOB LIVINGSTON, *et al.*

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

May a party who has not sustained physical injury to a proprietary interest nevertheless recover for economic loss? The identical issue was presented for review in *White v. M/V TESTBANK*, 106 S.Ct. 3271 (1986), in which this Honorable Court denied the application for a writ of certiorari.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

J. YOUNG & COMPANY, INC.,

Petitioner,

versus

M/V BOB LIVINGSTON, *et al.*

Respondents.

No. 85-2002

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUMMARY OF ARGUMENT

The rule that economic loss cannot be recovered absent physical injury to a proprietary interest is a "pragmatic limitation . . . upon the doctrine of foreseeability," *Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019, 1021 (5th Cir. 1985) (*en banc*), *cert. denied sub nom. White v. M/V TESTBANK*, 106 S.Ct. 3271 (1986), and mandates denial of the petition for a writ of certiorari.

ARGUMENT

This Honorable court recently was confronted with the identical issue presented by the case at hand in *White v. M/V TESTBANK*, 106 S.Ct. 3217 (1986). Petitioners' application for a writ of certiorari in that case was denied.

Here, cognizant of the limitations which logically must be imposed upon the concepts of foreseeability and proximate cause, the District Court and the Court of Appeals in the instant case denied petitioner's claim for economic loss because 1) petitioner lacked a proprietary interest in the wharf at issue, and 2) that wharf sustained no physical damage. *J. Young & Co., Inc. v. M/V BOB LIVINGSTON*, No. 85-3310 (5th Cir. Feb. 27, 1986). Thus, under the rule of *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927) and *Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th Cir. 1985) (*en banc*), *cert. denied sub nom. White v. M/V TESTBANK*, 106 S.Ct. 3217 (1986), prohibiting recovery for economic loss in cases in which no physical injury to a proprietary interest has been sustained, petitioner's claim failed to satisfy both requirements of the prerequisites for recovery—physical damage to a proprietary interest.

Respondents respectfully submit the *Robins/TESTBANK* rule is sound. As stated by the TESTBANK court:

> . . . pragmatic limitations on the doctrine of foreseeability are both desirable and necessary.
>
> * * *
>
> Plaintiffs concede, as do all who attack the requirement of physical damage, that a line would

> need to be drawn —somewhere on the other side, each plaintiff would say in turn, of its recovery.
>
> * * *
>
> Plaintiffs point to seemingly perverse results, where claims the rule allows and those it disallows are juxtaposed—such as vessels striking a dock, causing minor but recoverable damage, then lurching athwart a channel causing great but unrecoverable economic loss. The answer is that when lines are drawn sufficiently sharp in their definitional edges to be reasonable and predictable, such differing results are the inevitable result—indeed, decisions are the desired product.

TESTBANK, 752 F.2d at 1027, 1028, 1029.

Thus, far from disregarding the concepts of foreseeability and proximate cause, the District Court and the Court of Appeals dismissed petitioner's claim on the basis of the *Robins/TESTBANK* rule which itself is specifically grounded on the premise that without a bright line rule or pragmatic restriction, the concepts of foreseeability and proximate cause ultimately fail to function as rules of law. Accordingly, the *Robins/TESTBANK* holding, as applied to the facts of this case, must stand. Respondents therefore urge this Court to deny the petition for a writ of certiorari.

CONCLUSION

For the reasons stated above, the Writ of Certiorari should be denied.

Respectfully submitted:

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In the Supreme Court of the United States

October Term, 1986

J. YOUNG & COMPANY, INC.,
Petitioner,

versus

M/V BOB LIVINGSTON, ET AL
Respondents.

BRIEF OF DELTA MARINE TOWING, INC. IN OPPOSITION TO PETITION OF J. YOUNG & COMPANY, INC. FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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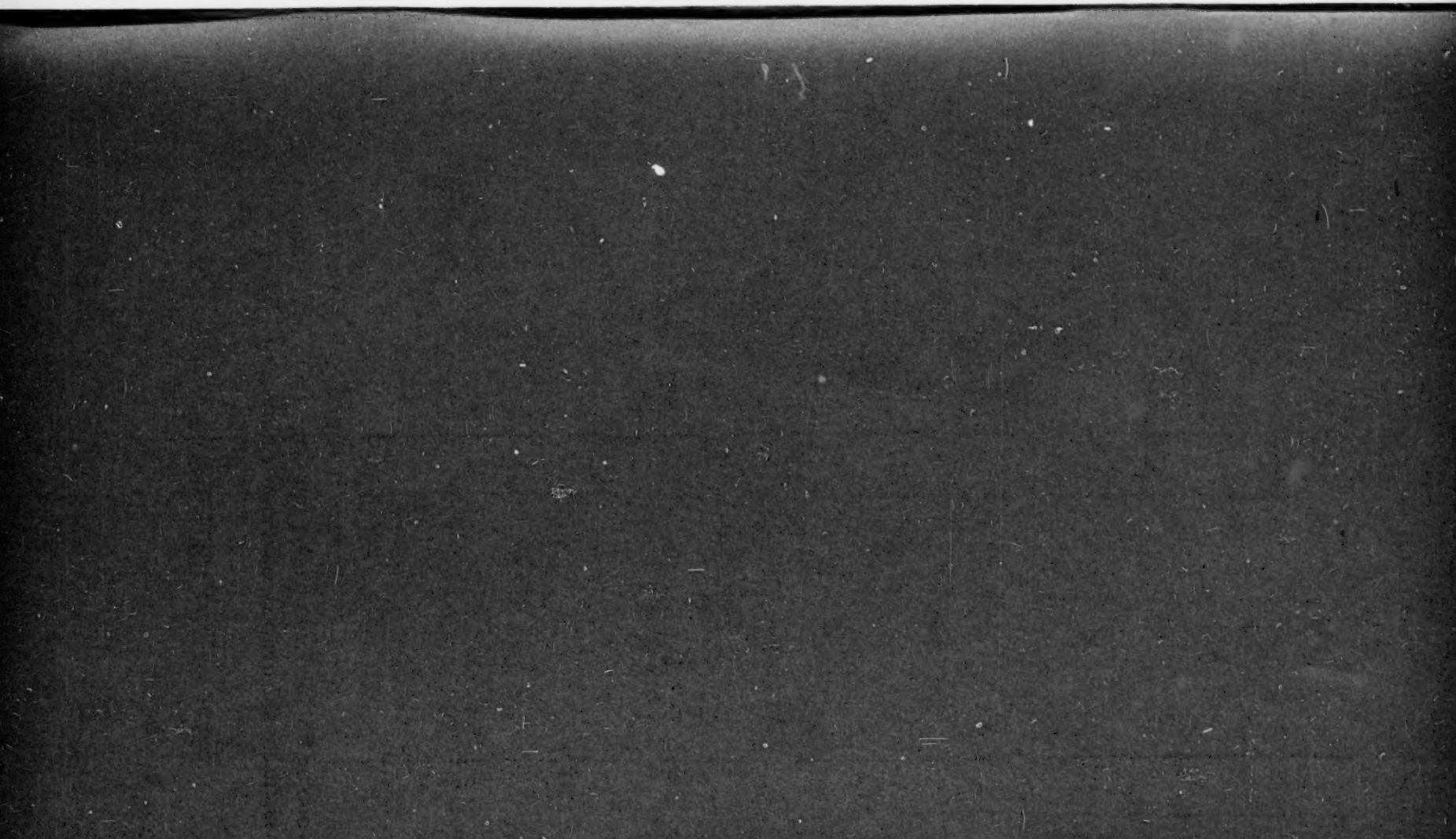

QUESTION PRESENTED FOR REVIEW

Whether Petitioner may recover damages for alleged economic loss where there has been accompanying physical damage to a proprietary interest.

LIST OF PARTIES

The parties to the proceedings in the Court of Appeals for the Fifth Circuit were:

J. Young & Company, Inc. (lessee and operator of certain portions of the Nashville Avenue Wharf)

Cove Shipping, Inc. (operator of the M/V COVE LEADER)

Cove Ventures, Inc. (owner of the M/V COVER LEADER)

Delta Marine Towing, Inc. (owner of the M/V BOB LIVINGSTON and M/V BILL HALL)

Mission Insurance Company (liability underwriter for the M/V BOB LIVINGSTON and the M/V BILL HALL)

The West of England Ship Owners Mutual Insurance Association (of London) Ltd. (insurer of the COVE LEADER, its owner and operator)

The Board of Commissioners for the Port of New Orleans (owners of certain portions of the Nashville Avenue Wharf)

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NO. 88-2002

In The
Supreme Court of the United States
October Term, 1986

J. YOUNG & COMPANY, INC.,
Petitioner

versus

M/V BOB LIVINGSTON, ET AL
Respondents

BRIEF OF DELTA MARINE TOWING, INC. IN OPPOSITION TO J. YOUNG & COMPANY, INC.'S PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINIONS BELOW

The opinions below are contained in the appendices to the Petition. Appendix "A" is the decision of the Court of Appeals for the Fifth Circuit, filed February 27, 1986. Appendix "B" is the Findings of Fact and Conclusions of Law of the District Court, dated April 29, 1985. Appendix "C" is the judgment entered by the United States District Court for the Eastern District of Louisiana, dated April 29, 1985.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on February 27, 1986.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

On December 31, 1982, Barges RGT-204, RGT-73, AGT-108, AGT-144, and WGN-511 were part of the tow of the M/V BOB LIVINGSTON and the M/V BILL HALL, which said tow was southbound on the Mississippi River near New Orleans, Louisiana.

Also on December 31, 1982, the M/V COVE LEADER was proceeding southbound on the Mississippi River and was astern of the M/V BOB LIVINGSTON and the M/V BILL HALL.

On the aforementioned date, the M/V COVE LEADER agreed to overtake the tow of the M/V BOB LIVINGSTON and the M/V BILL HALL, and while in the course of doing so, the tow of the M/V BOB LIVINGSTON and the M/V BILL HALL collided with a steel dolphin at the Westwego Barge Fleeting Facility on the Mississippi River, and also with the Sea Bee Lash Fleet secured at the said Westwego Barge Fleeting Facility, causing the barges in tow of the M/V BOB LIVINGSTON and the M/V BILL HALL to break tow and float downstream.

As a result of the aforesaid collisions, several of the barges lost from the tow of the M/V BOB LIVINGSTON and the M/V BILL HALL drifted alongside the Nashville

Avenue Wharf. Neither the M/V BOB LIVINGSTON nor the M/V BILL HALL, nor any of the barges constituting the tow of either vessel, came into contact with or caused any physical damage to the Nashville Avenue Wharf.

At the time of the aforementioned collision, the Nashville Avenue Wharf was owned and operated by the Board of Commissioners, Port of New Orleans and was leased to Lykes Bros. Steamship Company, Inc. and J. Young & Company, Inc.

Despite the occurrence of the aforementioned collision, there was no physical damage of any kind to any property which may have been owned, leased, rented, chartered or in any way under the control of J. Young & Company, Inc. or any of its agents, employees, representatives, contractors, subcontractors, or any other person or entity which may have been working for or in conjunction with J. Young & Company, Inc. in the area of the Nashville Avenue Wharf on the aforementioned date.

However, as a result of the above-mentioned incident, Barge RGT-73 sank and came to rest adjacent to the Nashville Avenue Wharf, which is located on the left descending bank of the Mississippi River, at New Orleans, Louisiana.

As a result of the aforementioned sinking, attempts were made to salvage Barge RGT-73. These salvage attempts were unsuccessful, and on January 11, it was decided that Barge RGT-73 was a constructive total loss and salvage efforts were therefore discontinued. Thereafter, Barge RGT-73 was removed on a removal-of-wreck basis, and said barge was finally broken sections and so removed from the Mississippi River on January 27, 1983.

Named as defendants in the consolidated litigation bearing the title "River & Gulf Transportation, et al v. M/V BOB LIVINGSTON, et al", Civil Action No. 83-405 in the United States District Court for the Eastern District of Louisiana, were Delta Marine Towing, Inc. (the owner and operator of both the M/V BOB LIVINGSTON and the M/V BILL HALL); Mission Insurance Company (Delta's insurer); Cove Ventures, Inc. (the owner of the M/V COVE LEADER); Cove Shipping, Inc. (the operator of the M/V COVE LEADER); and West of England Ship Owners Mutual Association Ltd. (insurer of the Cove interests).

During the course of the trial at the District Court level, petitioner alleged that the sinking of RGT-73 prevented its use of certain sections of the Nashville Avenue Wharf. Petitioner further alleged that it incurred certain costs and expenses due to the alleged blockage of certain portions of the Nashville Avenue Wharf until the removal of Barge RGT-73 on January 27, 1983. However, to date, petitioner has not offered any proof as to the amounts of these alleged damages. In addition, petitioner does not dispute that any damages alleged by it herein arise solely out of its lease contract with the Board of Commissioners for the Port of New Orleans to use the Nashville Avenue Wharf facility. However, the Board of Commissioners for the Port of New Orleans has not been named as a defendant in this litigation.

In its Findings of Fact and Conclusions of Law rendered at the District Court level, the trial court held that the claim of J. Young & Company, Inc. should be dismissed as per the rulings of *Robins Dry Dock and Repair Co. v. Flint,* 275 U.S. 303 (1927); and, *James White d/b/a Blue Wave Oyster Compnay v. M/V TESTBANK* (formerly *State of Louisiana ex.rel. Guste v. M/V*

TESTBANK(, 752 F.2d 1019 (5th Cir. 1985) (*en banc*), *cert. denied*, 106 S.Ct. 3271 (1986), and as per the Court's finding that there was no physical damage to any proprietary interest of J. Young & Company, Inc.

Subsequent to the aforementioned ruling of the District Court on April 28, 1985, petitioner filed an appeal to the United States Court of Appeals for the Fifth Circuit. Thereafter, the Court of Appeals for the Fifth Circuit issued an opinion dated February 27, 1986, affirming the dismissal order of the District Court.

SUMMARY OF ARGUMENT

The United States Fifth Circuit of Appeals has long adherd to the rule that there can be no recovery of an economic loss for a party unless that party has also suffered physical injury to a proprietary interst. This rule was originally set forth by this Court in *Robins Dry Dock and Repair Co. v. Flint, supra*, and was most recently reaffirmed as the guiding light to the Fifth Circuit in *James White d/b/a Blue Wave Oyster Company v. M/V TESTBANK, supra*.

Petitioner has suffered no physical injury to a proprietary interest, and, accordingly, cannot recover its alleged economic losses as per the rulings cited above. In dismissing petitioner's claims the District Court and the Court of Appeals in this matter were completely consistent not only with their prior rulings, but also with the rulings of this Court.

Additionally, respondents further suggest that petitioner has, by its own admission, admitted that the question herein is identical to the questions presented to the Court in the matter entitled "James White, d/b/a Blue

Wave Oyster Company, et al v. M/V TESTBANK", bearing No. 84-1808, which said matter had been brought for writ of certiorari before this Court in the October term, 1985. Respondents suggest that on June 23, 1986, this court denied the petition for writ of certiorari in "James White, d/b/a Blue Wave Oyster Company, et al v. M/V TESTBANK", and accordingly, should also deny the petition for writ of certiorari herein for those same reasons.

REASONS PRESENTED IN OPPOSITION TO WRIT OF CERTIORARI

For many years, the United States Court of Appeals for the Fifth Circuit has adhered to a bright-line rule that a party may not recover damages for ecomonic loss where there is no accompanying physical injury to a proprietary interest. This principle was first set forth by this Court in *Robins Dry Dock and Repair Co. v. Flint, supra.* In *Robins,* the time charterer of a vessel, identified as the steamship BJORNEFJORD, delivered the steamship to a dry dock service for repairs. Thereafter, and due to the negligence of the dry dock service, one of the ship's propellers was damaged, and had to be replaced, thus causing the vessel to be further delayed. The time charterer then filed suit for the economic damages which it allegedly suffered due to the aforementioned delay. The Court, however, saw that the plaintiff was only a time charterer of the vessel, with no proprietary interest in the ownership of the vessel, and accordingly, held that the time charterer's claim:

> "...arose only through their contract with the owners--and while intentionally to bring about a breach of contract may give rise to a cause of action ...No authority need be cited to show that, as a general rule, at least, a tort to the person or

> property of one man does not make the tortfeasor liable to another merely because the injured person was under a contract with that other unknown to the doer of the wrong."*Robins Dry Dock and Repair Company v. Flint, supra*, p. 135.

Clearly, the rule set forth by this Court in *Robins Dry Dock and Repair Company v. Flint, supra*, was that negligent interference with a claimant's contract with a third party which causes economic damage to the claimant must be denied where there is no physical injury to a proprietary interest of a claimant.

The Fifth Circuit has held fast to that rule in the cases of *Kaiser Aluminum & Chemical Corporation v. Marshland Dredging Company*, 445 F.2d 957 (5th Cir. 1972); *Dick Meyers Towing Service, Inc. v. United States*, 577 F.2d 1023 (5th Cir. 1978); *Louisville and Nashville Railroad Company v. M/V BAYOU LACOMBE*, 597 F.2d 469 (5th Cir.1979(; and, *Akron Corporation v.M/T CANTIGNY*, 706 F.2d 151 (5th Cir. 1983).

More recently, the Fifth Circuit Court of Appeals followed the rule ennunciated by the Court in *Robins Dry Dock and Repair Company v. Flint, supra*, and in the case of *James White d/b/a Blue Wave Oyster Company v. M/V TESTBANK, supra*. In *James White d/b/a Blue Wave Oyster Company v. M/V TESTBANK, supra*, the M/V TESTBANK, a container ship, collided with the M/V C. DANIEL on July 22, 1980, thus resulting in a barge spill of PCP, which was being carried by the M/V TESTBANK, and which said spill occurred in the Mississippi River Gulf Outlet in Louisiana. Thereafter, the United States Coast Guard closed the Mississippi River Gulf Outlet to navigation until August 10, 1980; and all fishing, shrimping, and

related activity was temporarily supended in the outlet and the 400 square miles of suuounding marsh and area waterways. Thereafter, 41 lawsuits were filed by varous plaintiffs, including suits by persons representing shipping interests, marina and boat rental operators, wholesale and retail food enterprises, seafood restaurants, etc.

In responding to the many claims for ecomomic losses by these businesses, who had suffered no physical damage to a proprietary interest, the Fifth Circuit Court of Appeals held that:

Robins broke no new ground but instead applied a principle, then settled both in the United States and England, which refused recovery for negligent interference with contractual rights. Stated more broadly, the prevailing rule denied the plaintiff recovery for economic loss if that loss resulted from physical damage to property in which he had no proprietary interest." *James White d/b/a Blue Wave Oyster Company v. M/V TESTBANK, supra,* page 1022.

J. Young & Company, Inc., has, by its own admission, stated that the questions presented in its petition for writ of certiorari are identical to those presented in the matter entitled "James White, d/b/a Blue Wave Oyster Company, et al v. M/V TESTBANK", and bearing No. 84-1808, (formerly *State of Louisiana ex.rel. Guste v. M/V TESTSBANK, supra),* which said application for writ of certiorari was filed to the United States Supreme Court during the October term, 1985.

On June 23, 1986, and in response to the writ of certiorari filed in the matter of "James White, d/b/a Blue Wave Oyster Company, et al v. M/V TESTBANK, this Court denied the Petition for Writ of Certiorari.

Respondent suggests that since the writ of certiorari in "James White, d/b/a Blue Wave Oyster Company, et al v. M/V TESTBANK, et al", *supra* was denied, and since petitioner admits that the questions presented in that matter are identical to the questions presented here, then the Petition herein for writ of certiorari should also be denied as the same have already been recently adjudicated by this Court.

Respondent avers that petitioner is well aware of the denial of the writ of certiorari in *James White d/b/a Blue Wave Oyster Company, supra*, and yet persists in maintaining this Petition despite the fact that petitioner has admitted in his brief that the issues presented for review here are identical to those presented in *James White d/b/a Blue Wave Oyster Company, et al.* Respondent further avers that the maintenance of this writ application continues despite respondent's pleas for its voluntary dismissal in the interest of judicial economy.

Accordingly, respondent suggests that this application for writ of certiorari is frivolous and that respondent should be awarded all attorney's fees and costs associated with having to respond to this Petition. Respondent further suggests that this application for attorney's fees and costs is made pursuant to Rule 49.2 of the Supreme Court Rules and Rule 11 of the Federal Rules of Civil Procedure.

CONCLUSION

For the reasons stated, the writ of certiorari herein should be denied.

Respectfully submitted,

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October, 1986

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 85-3310
Summary Calendar

J. YOUNG & CO., INC.,
Plaintiff-Appellant,

versus

THE M/V BOB LIVINGSTON, ET AL.
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Texas

(February 27, 1986)

Before RUBIN, REAVLEY and HILL, Circuit Judges.
PER CURIAM:*

Plaintiff J. Young & Co., Inc. (Young) appeals from the dismissal of its suit against defendants, the M/V BOB LIVINGSTON er al.[1] We affirm.

---

* Local Rule 47.5 provides: "The publication of opinions that have no perecedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

[1] Defendants-Appellees are Delta marine, Towing, Inc. (the owner and operator of both the M/V BOB LIVINGSTON and the M/V BILL HALL); Mission Insurance Co. (Delta's Insurer); Cove Ventures, Inc. (the owner of the M/V COVE LEADER); Cove Shipping, Inc. (the operator of the M/V COVE LEADER); and West of England Ship Owners Mutual Association Ltd. (the insurer of Cove interests).

On the early morning of December 31, 1982, the M/V BOB LIVINGSTON and the M/V BILL HALL were heading downbound on the Mississippi River with nine barges in tow. The M/V COVE LEADER, traveling behind this procession of tugs and barges was in the course of overtaking them with one of the barges collided with the Sea Bee Lash Fleet moored at the Nashville Avenue Wharf. The impact of the collision caused the barges to break tow and to float downstream. One of the barges sank about thirty or forty feet away from a section of the Nashville Avenue Wharf leased and operated by Young.

From the date of the sinking on December 31 until January 27, 1983, Young's shipping customers had no access to berths where loading and unloading of cargo normally took place. Young's customers were forced to dock at distant berths and Young was obliged to use extra equipment and hire extra labor in order to service them.

Finding that Young had no proprietary interest in the Nashville Avenue Wharf, the district court held that *Robins Dry Dock and Repair Co. v. Flint*, 275 U.S. 303 (1927), and *Louisiana ex. rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th Cir. 1985) (en banc), precluded recovery by Young.

II.

Young's claim fails in two respects. First, it lacks a proprietary interest in the wharf. Second, there was no physical damage to its leased interest. In *Robins*, the time charterers of a steamship sought to recover for their lost use of the ship when the defendant drydock company negligently damaged the propeller. The Supreme Court denied the claim, reasoning that

> [the time charterer's] loss arose only through their contract with the owners and...a tort to the person or porperty of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong.

275 U.S. at 308-09. In *TESTBANK*, we discerned a dual significance in the *Robins* holding. First and most obvious, a claimant seeking recovery must demonstrate injury to a proprietary interest. Second, mere economic loss (such as loss affecting the value of a contract right) is not recoverable. *TESTBANK* formally united these two principles, holding "there could be no recovery for economic loss absent physical injury to a proprietary interest." 752 F.2d at 1023.

Young, having demonstrated no proprietary interest in this leased portion of the wharf, further having demonstrated no physical damage to his facilities, has no cause of action against defendants.

This opinion in unanimous, but Judge Rubin notes that, while he adheres to the dissenting opinion in *TESTBANK, supra*, the court is bound by that en banc decision.

AFFIRMED.

A true copy.

Test:
Clerk, U.S. Court of Appeals
Fifth Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 83-405
consolidated with
83-5741, 83-6216, and 83-5747

SECTION "J"

RIVER & GULF TRANSPORTATION

versus

M/B BOB LIVINGSTON, ETC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On December 31, 1982, the M/V BOB LIVINGSTON and the M/V BOB HALL were pushing a flotilla of nine barges down the Mississippi River when the M/V COVE LEADER attempted a passing maneuver. The M/V BOB LIVINGSTON and the M/V BOB HALL successfully avoided a collision with the M/V COVE LEADER, but their tow collided with the Sea-Bee Lash Fleet moored at the Nashville Wharf. The wharf was owned by the Board of Commissioners of the City of New Orleans.

Ohio Barge Line, Inc., River & Gulf Transportation Company, Warrior & Gulf Navigation Company, and A & G Transportation Company are the barge owners/operators who claim that they suffered damage due to the collisions.

J. Young & Company, Inc. claims loss of use of the Nashville Wharf due to the sinking of a barge in front of a portion of the dock it leased from the Board of Commissioners, and also claims that the salvage operations interfered with its use of the dock.

Named as defendants are Delta Marine Towing, Inc. (the owner and operator of both the M/V BOB LIVINGSTON and the M/V BILL HALL); Mission Insurance Company (Delta's insurer); Cove Ventures, Inc. (the owner of the M/V COVE LEADER); and West of England Ship Owners Mutual Association, Ltd. (Insurer of the "Cove" interests).

Liability and quantum were bifurcated and the defendants stipulated liability for 100% of the plaintiff's provable damages on the following basis:

> —Delta Marine Towing, Inc. and Mission Insurance Company are liable for 65% of the total of all damages; and
>
> —Cove Shipping, Inc., Cove Ventures, Inc., and West of England Ship Owners Mutual Association, Ltd. are liable for 35% of all damages.

Because of the foregoing stipulation, this court's inquiry is limited to a determination of the amount of damage sustained by the plaintiffs. Based upon the evidence introduced at trial and the stipulations of the parties involved, this court makes the following Findings of Fact and Conclusions of law:

Ohio Barge Line, Inc. and River & Gulf Transportation Company have become a single corporate entity.

Ohio Barge Line, Inc. and/or River & Gulf Transportation Company have paid invoices for the following items due to the collisions:

1)	Damage to Barge AGT-108	$6,099.82
2)	Damage to Barge AGT-144	2,159.00
3)	Damage to Barge WGN-511	1,600.00
4)	Salvage Costs	137,633.75
5)	Dockage Charges	2,227.00
6)	Towing and Shifting expense	2,922.50
7)	Electronic Survey (to locate barge)	820.00
8)	Barge Damage Survey	10,329.99
9)	Cargo Loss	77,275.94

The defendants have introduced no evidence controverting the fact that these amounts were proper, so this court finds that Ohio Barge Line, Inc. is entitled to recover these items.

River & Gulf Transportation Company was the owner of RGT-73 which sank due to the accident, so it is also entitled to recover $75,000 for the total loss of that vessel.

A & G Transportation Company was the owner of the AGT-204 which also sank, so it is entitled to recover $175,000 for the sinking of that vessel.

The only loss sustained by Warrior & Gulf Navigation Company was physical damage to the WGN-511 in the amount of $1,600. Ohio Barge Line, Inc. is the person legally entitled to recover this item of damage as Warrior & Gulf's subrogee.

Ohio Barge Line surveyed several vessels not owned/operated by any of the parties in this lawsuit. The claims of the plaintiffs for an additional $3,661.50 representing these survey expenses are disallowed because none of the plaintiffs were owners/operators of the following vessels: HBL-1602B, ITEL-207, Sea Bee-Lash Fleet No. 1-11 Dolphins, LY-26, LY-31, LY-81, and LY-17Y.

J. Young & Company, Inc. does not have a proprietary interest in the Nashville Wharf. That wharf is owned by the Board of Commissioners of the City of New Orleans. J. Young & Company does have a contractual right to use that wharf, but J. Young & Company did not contract with any of the defendants.

The General Maritime law does not allow recovery for economic loss where there is no physical injury to a propietary interest, so the claims of J. Young & Company, Inc. must be denied.

Prejudgment interest will be allowed from the date of the collision, December 31, 1982. The rate for prejudgment interest will be the same rate as specified in 28 U.S.C. 1961(a): the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week U.S. Treasury Bills settled immediately prior to the date of the judgment.

The rule of *Robins Dry Dock v. Flint,* 275 U.S. 303, 48 S.Ct. 134 (1927) is as follows: a plaintiff cannot recover for economic loss if the loss resulted from physical damage to property in which he had no proprietary interest. *State of La. Ex Rel Guste v. M/V TESTBANK,* 752 F.2d 1019 (5th Cir. 1985).

In *Kaiser Aluminum v. Chemical Corp. v. Marshland Dredging Co.*, 455 F.2d 957 (5th Cir., 1972) a Marshland Dredging Company barge negligently dropped an anchor damaging an underwater pipeline owned and operated by Sugar Bowl Gas Company. The gas flow to Kaiser Aluminum was immediately shut off causing an entire plant to shut down. Kaiser sued Marshland Dredging for shutdown expenses and production losses, but the district court granted summary judgment dismissing the case based upon *Robins Dry Dock, supra.* The Fifth Circuit affirmed.

The negligence of M/V BOB LIVINGSTON, M/V BILL HALL and/or M/V COVE LEADER caused the Barge BGT-73 to sink in front of the Nashville Wharf. This interfered with J. Young's rights under its contract just as the negligent handling of the anchor of Marshland interfered with Kaiser Aluminum's rights under its contract with Sugar Bowl Gas Company. But, negligent interference with contractual rights is not actionable under maritime tort law. The claims of J. Young & Company must be dismissed.

The general rule in admiralty is that those injured by tortious collisions are entitled to prejudgment interest as part of just compensation for the wrong done. *Sinclair Refining Company v. S.S. GREEN ISLAND,* 426 F.2d 260 (5th Cir. 1970). Interest runs from the date of the collision. *American Zinc Co. v. Foster,* 441 F.2d 1100 (5th Cir., 1971).

The court finds no circumstances in this particular case which would justify the disallowance of prejudgment interest will run from date of the collision, December 31, 1982.

The parties disagree on the rate of prejudgment interest to be applied. This court recognizes that the rate of post judgment interest is statutory, but Congress has not indicated what interst rate will apply prior to the date of judgment.

The plaintiffs contend that this court should use the rate of interest provided by Louisiana law. Prior to the amendment to 28 U.S.C. 1961, all federal court judgments were subject to interest at the State rate of interest. But, the amendment to that section eliminates the requirement to confrom to the State post-judgment rate. Recognizing the benefits of uniformity, this court declines to accept the plaintiff's invitation to set interest at the Louisiana rate. Instead, this court finds that the rate of prejudgment interest should be the same rate as will be applicable after the entry of the judgment.

New Orleans, Louisiana this the 29th day of April, 198. .

/s/ Patrick E. Carr
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RIVER & GULF TRANSPORTATION	CIVIL ACTION
VERSUS	NO. 83-405 consolidated with
M/V BOB LIVINGSTON, INC.	83-5741, 83-6216, and 83-5747
	SECTION "J"

JUDGMENT

In accordance with this court's written Findings of Fact and Conclusions of Law,

IT IS ORDERED, ADJUDGED AND DECREED that there is judgment in favor of plaintiffs, Ohio Barge Inc., and River & Gulf Transportation Company and against defendants Delta Marine Towing, Inc. and Mission Insurance Company in the amount of $205,443.56 plus interest at the rate specified in 28 U.S.C 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is judgment in favor of plaintiff, Ohio Barge Lines, Inc. and River & Gulf Transportation Company and against defendants, Cove Ventures, Inc., Cove Shipping, Inc. and West of England Ship Owners Mutual Association, Ltd. in the amount of $110,623.45 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of A&G Transportation Company and against defendants Delta Marine Towing, Inc. and Mission Insurance Company in the amount of $113,750.00 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is judgment in favor of A & G Transportation Company and against defendants Cove Ventures, Inc., Cove Shipping, Inc. and West of England Ship Owners Mutual Association, Ltd. in the amount of $61,250.00 plus interest at the rate specified in 28 U.S.C. 1961(a) from December 31, 1982 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims of J. Young & Company, Inc. and Warrior & Gulf Navigation Company are dismissed.

New Orleans, Louisiana, this the 29th day of April, 1985.

/s/ PATRICK E. CARR
UNITED STATES DISTRICT JUDGE